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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/751,290	12/29/2000	Aaron Strand	8160.16016-CIP2 US	8901

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EXAMINER

MADSEN, ROBERT A

ART UNIT	PAPER NUMBER
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1761

DATE MAILED: 05/18/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/751,290

Applicant(s)

STRAND ET AL

Examiner

Robert Madsen

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 08 March 2004.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 117-137, 145 and 187-191 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 117-137, 145 and 187-191 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- ☒ Notice of References Cited (PTO-892)
- ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date Sept 29, 2003
- ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____
- ☐ Notice of Informal Patent Application (PTO-152)
- ☐ Other: _____

DETAILED ACTION

1. The Amendment filed March 8, 2004 has been entered. Claims 1-116, 138-144, and 146-186 have been cancelled. Claims 187-191 have been added. Claims 117-137, 145, and 187-191 remain pending in the application.
2. Applicant is advised that should claim 187 be found allowable, claim 188 will be objected to under 37 CFR 1.75 as being a substantial duplicate thereof. When two claims in an application are duplicates or else are so close in content that they both cover the same thing, despite a slight difference in wording, it is proper after allowing one claim to object to the other as being a substantial duplicate of the allowed claim. See MPEP § 706.03(k).

Claim Rejections - 35 USC § 103

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.
4. Claims 117-120, 123-127, 131-133, 145, 189, 191 are rejected under 35 U.S.C. 103(a) as being unpatentable over Taheri (US 6149302), evidenced by Kamp (US 4428788) and Ferrell (US 4582549), in view of Bell Jr. (US 3438567) and Kraus (US 3380481).
5. Regarding claims 117-120, 123-127, 131, 145, 189, 191, Taheri teaches a reclosable bag substantially comprising a single sheet of a parent film having

predetermined dimensions as recited in claim 123 (as described in Column 12, line 59 to Column 13, line 32), including a hood (in Figure 14) having two areas of structural weakness (i.e. items 370 and 350) that are integral to the parent film as recited in claim 124 and extend linearly in a pattern of predetermined length and width (i.e. below the fasteners and across the entire width in Figures 13 and 14) as recited in claims 125-127, 131, a fold structure between the areas of weakness (i.e. fold at item 372), a first side panel (i.e. item 310), a second side panel (i.e. item 312), a bottom included in the web between the first and second panels, an opening between the hood and the second side panel (i.e. see Figure 13), a reclosable press to close fastener structure with first and second interlockable tracks as recited in claim 189 (i.e. items 320/322 in Figures 12 and 14, explained in greater detail in Column 9, lines 11-52 and Figure 2) that extend into the hood and are above the weakened areas (i.e. see Figure 14) and the bag is capable of being filled with food products (Column 1, lines 15-25, Column 13, line 24 to Column 14, line 16, Column 15, line 17 to Column 16, line 46). Taheri further teaches the interlockable tracks may be either integrally formed with the panels or formed separately and attached by adhesive, welding or other attachments (Column 13, lines 50-67). Taheri teaches the tracks may be formed separately and attached as well established by the prior art (Column 11, line 14 to Column 12, line 20) including Ferrell, who teaches attaching fasteners *integrally* (i.e. extruded onto) formed with skirts structures from which a distal portion is attached to the web material as recited in claims 117, 118, 145, 191 (Figures 3-5, Column 4, lines 21-33), and Kamp, who teaches attaching fasteners by *coupling* skirts structures from which a distal portion is attached

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to the web material as recited in claims 117, 119, 145, and 191 (Column 3, lines 59 to Column 4, line 43), both teach skirts with outside surfaces and inside (i.e. facing the bag interior) surfaces, as recited in claim 120. Taheri only differs from the claims in that Taheri is silent in teaching a gusseted portion defining the bottom of the bag as recited in claims 117, 145, and 191.

6. However providing a gusset bottom is a notoriously well known feature of reclosable bags. Taheri teaches the bag is capable of being filled with food, and Bell, Jr. teaches it is desirable to provide plastic food bags with gusseted bottoms in order to provide a means for storing the bags in that they can be stored in a vertical position and for displaying on store shelves (Column 1, lines 25-45). Kraus, who also teaches forming a bag with resealable with fasteners in a similar manner as Taheri, is relied on as evidence of optionally forming a gusseted portion at the bottom of the bag (See Figures 1 and 20, column 1, lines 18-57, Column 2, lines 40-63, Column 3, lines 1-35, Column 6, lines 20-47). Therefore, it would have been obvious to provide a gusseted bottom to the bag of Taheri since (1) Bell JR. teach this provides the benefit of allowing the bag to be stored in a vertical/upright position for display on store shelves and (2) Kraus teaches that resealable bags formed in a similar as Taheri can be made with either a gusseted or non-gusseted bottom.

7. Regarding claims 132 and 133, Taheri teaches the areas of structural weakness *comprise* line 370, which is either perforated as recited in claim 132, scored as recited in claim 133, or includes any other disruption (Column 16, lines 17-23).

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8. Claims 121, 122, 135, 136, 190 are rejected under 35 U.S.C. 103(a) as being unpatentable over Taheri (US 6149302), evidenced by Kamp (US 4428788) and Ferrell (US 4582549), in view of Bell Jr. (US 3438567) and Kraus (US 3380481), as applied to claims 117-120, 123-127, 131-133, 145, 189, 191 above, further in view of May (US 5725312).

9. Regarding claims 121 and 122, Taheri teaches the fasteners between the two panels that may include skirts with outside surfaces and inside (i.e. facing the bag interior) surfaces as discussed above in the rejection of claim 120. The purpose of the fasteners is intended to keep contaminants out of the interior and/or prevent discharge of material from the interior (Column 14, lines 10-17), but Taheri is silent in teaching a backing strip extending below the lower portion of the inside surface of the skirt structure having its distal portion coupled to the web material near the portion of the hood most distal from the first panel as recited in claims 121 and 122.

10. May also teaches food bags made from two panels with reclosable fasteners comprising skirts with outside and side surfaces. May further teaches providing a backing strip (i.e. item 228 in Figures 13 and 14) on the inside surface of the female side of the fastener (i.e. the portion facing the interior of the bag) having its distal portion coupled to the web and that extends below the skirt of the fastener in order to provide a hermetic seal for the bag that is easily broken (Column 15, line 60 to Column 16, line 53, Column 17 lines 20-45 and Column 18, lines 48-67). Therefore it would have been obvious to modify Taheri and provide a backing strip on the inside surface of the female side of the fastener, which is the portion of the web material *near* the portion

of the hood most distal from the first panel (i.e. the portion with item 370) such that the backing strip distal end extends below the skirt portion of the fastener as recited in claims 121 and 122, since the purpose of the fastener taught by Taheri is to prevent contaminants from entering and food from leaving the bag and May teaches the baking strip in combination with the fastener helps to hermetically seal food in the bag that can be easily broken by the consumer and the purpose of Taheri is to prevent contaminants from entering and food from leaving the bag.

11. Regarding claims 135, 136, and 190, Taheri teaches the fasteners between the two panels is intended to keep contaminants out of the interior and/or prevent discharge of material from the interior (Column 14, lines 10-17), but is silent in teaching a peelable seal between the two panels, as recited in claim 190, or a multiple laminate with at least one layer of material comprising a tear path as recited in claims 135 and 136.

12. May also teaches food bags made from two panels with a reclosable fastener, and further teaches the panels comprise a multilaminate film with a tear path and a peelable seal between the two panels (e.g. in Figures 15 and 16, Column 18, lines 60-67 in light of Column 20, line 25 to Column 21 line 8), as recited in claims 135, 136, and 190. The peelable seal between the two panels, in addition to the reclosable fastener, is to provide hermetically seal the bag that is easily broken by the consumer (Figures 19-21, Column 22, lines 15-59, Column 23, lines 30-47, Column 1, lines 35-56 and Column 3, lines 10-15). Therefore, it would have been obvious to include a multiple laminate with at least one layer of material comprising a tear path, as recited in claims 135 and

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136, formed by a peelable seal as recited in claim 190, since the purpose of the fastener taught by Taheri is to prevent contaminants from entering and food from leaving the bag and May teaches the multilaminate peelable seal in combination with the fastener structure allows to hermetically seal food in the bag that can still be easily broken by the consumer.

13. Claims 128-130, 134 are rejected under 35 U.S.C. 103(a) as being unpatentable over Taheri (US 6149302), evidenced by Kamp (US 4428788) and Ferrell (US 4582549), in view of Bell Jr. (US 3438567) and Kraus (US 3380481), as applied to claims 117-120, 123-127, 131-133, 145, 189, 191 above, further in view of Hayashi et al. (US 6074097).

14. Taheri teaches a linear area of weakness comprising perforations, scoring, or any other disruption, but is silent in a non-linear area of weakness as recited in 128-130 or micro perforations as recited in claim 134.

15. Hayashi et al also teach reclosable bags with an area of weakness (Column 20, lines 10-26). Hayashi is relied on as evidence of the conventionality of providing a non-linear area (i.e. not a straight line), as recited in claim 128 for opening a bag (Column 18, lines 31-40, Figure 10). Hayashi et al. teach the preferred non-linear length and width (e.g. 106 in Figure 10), as recited in claims 129 and 130, along with micro-perforations as recited in claim 134, both tear strength and tear control (i.e. the tear follows the same shape as the area of weakness) of the area of weakness is more easily controlled (Column 13, lines 35-Column 14, line 12). Furthermore, Hayashi et al.

teaches, microperforations may be replaced by perforations or scoring as taught by Taheri (Column 18, lines 31-40, Figure 10).

Therefore, it would have been obvious to further modify Taheri and include a non linear line of weakness, including microperforations as recited in claim 134, at a predetermined length and width as recited in claims 128-130, since Hayashi et al. teach microperforations are used alternatively to perforations or scoring and providing a non-linear path provides greater tear strength and control.

16. Claims 187 and 188 are rejected under 35 U.S.C. 103(a) as being unpatentable over Taheri (US 6149302), evidenced by Kamp (US 4428788) and Ferrell (US 4582549), in view of Bell Jr. (US 3438567) and Kraus (US 3380481), as applied to claims 117-120, 123-127, 131-133, 145, 189, 191 above, further in view of Provan et al. (US 6347437 B2).

17. Taheri teaches a recloseable bag with a zip action having zipper features either part of the panels or applied separately as discussed above in the rejection of claim 117, but Taheri is silent in teaching the zipper features are a slider fastener assembly. Provan et al. teach zipper arrangements for plastic food bags are known, and that a zipper arrangement without a slider is not preferred by consumers because of the difficulty in opening the zipper (Column 1, lines 30-55). Consequently, Provan et al. teach a method of easily applying two sections of a slider fastener assembly to two bag panels in order to obtain the benefit of a slider assembly for bags with zipper closures (Column 1, line 51 to Column 2, line 39). Therefore, it would have been obvious to

modify Taheri and attach a slide fastener assembly instead of the male/female track configuration of Taheri since Provan teaches (1) slide fastener assemblies are preferred by consumers for reclosable food bags and (2) Provan et al. teach how to easily applying slider assemblies to two panels of a bag.

18. Claim 137 is rejected under 35 U.S.C. 103(a) as being unpatentable over Taheri (US 6149302) in view of Provan et al. (US 6347437 B2) and Bell Jr. (US 3438567) and Kraus (US 3380481).

19. Taheri teaches a reclosable bag comprising a least one sheet of a web material, including a hood (in Figure 14) having two areas of structural weakness (i.e. items 370 and 350), a fold structure between the areas of weakness (i.e. fold at item 372), a first side panel (i.e. item 310), a second side panel (i.e. item 312), a bottom included in the web between the first and second panels, an opening between the hood and the second side panel (i.e. see Figure 13), a reclosable press to close fastener structure with first and second interlockable tracks (i.e. items 320/322 in Figures 12 and 14, explained in greater detail in Column 9, lines 11-52 and Figure 2) that extend into the hood and are above the weakened areas (i.e. see Figure 14) and the bag is capable of being filled with food products (Column 1, lines 15-25, Column 13, line 24 to Column 14, line 16 Column 15, line 17 to Column 16, line 46). Taheri further teaches the interlockable tracks forming a zipper-type arrangement may be either integrally formed with the panels or formed separately and attached by adhesive, welding or other attachments (Column 13, lines 50-67, Column 11, line 14 to Column 12, line 20) Taheri is silent in

teaching the interlockable track forming the zipper type arrangement includes a fin type structure and a gusseted portion defining the bottom of the bag.

20. With respect to the fin structures, Provan et al. teach zipper arrangements for plastic food bags are known, and that a zipper arrangement without a slider is not preferred by consumers because of the difficulty in opening the zipper(Column 1, lines 30-55). Provan et al. teach such slider assemblies include a fin structure (Column 3, lines 30-67). Provan et al. teach a method of easily applying two sections of a slider fastener assembly to two bag panels in order to obtain the benefit of a slider assembly for bags with zipper closures (Column 1, line 51 to Column 2, line 39). Therefore, it would have been obvious to modify Taheri and attach a slide fastener assembly instead of the male/female track configuration of Taheri since Provan teaches (1) slide fastener assemblies with fin structures are preferred by consumers for reclosable zipper type food bags and (2) Provan et al. teach how to easily applying slider assemblies to two panels of a bag.

21. With respect to providing a gusset bottom is a notoriously well known feature of reclosable bags. Taheri teaches the bag is capable of being filled with food, and Bell Jr. teaches it is desirable to provide plastic food bags with gusseted bottoms in order to provide a means for storing the bags in that they can be stored in a vertical position and for displaying on store shelves(Column 1, lines 25-45). Kraus , who also teaches forming a bag with resealable with fasteners in a similar manner as Taheri, is relied on as evidence of optionally forming a gusseted portion at the bottom of the bag (See Figures 1 and 20, column 1, lines18-57, Column 2, lines 40-63, Column 3, lines 1-

35, Column 6, lines 20-47). Therefore, it would have been obvious to provide a gusseted bottom to the bag of Taheri since (1) Bell JR. teach this provides the benefit of allowing the bag to be stored in a vertical/upright position and (2) Kraus teaches that resealable bags formed in a similar can be made with either a gusseted or non-gusseted bottom.

Response to Arguments

22. Applicant's arguments, with respect to the rejection of claims 117-120, 123-127, 131, 132, 145 under 35 U.S.C. 103(a) as being unpatentable over Kraus (US 3380481) in view of Branson (US 4927271), claims 128-130, 133, 134 under 35 U.S.C. 103(a) as being unpatentable over Kraus (US 3380481) in view of Branson (US 4927271) further in view of Hayashi et al. (US 6074097), claims 121, 122, 135, and 136 under 35 U.S.C. 103(a) as being unpatentable over Kraus (US 3380481) in view of Branson (US 4927271) further in view of May (US 5725312), claims 117-120, 123-127, 131, 132, 137, 145 under 35 U.S.C. 103(a) as being unpatentable over Stolmeier et al. (US 6257763 B1) in view of Kraus (US 3380481), claims 128-130, 133, 134 under 35 U.S.C. 103(a) as being unpatentable over Stolmeier et al. (US 6257763 B1) in view of Kraus (US 3380481), further in view of Hayashi et al. (US 6074097), claims 121 and 122 under 35 U.S.C. 103(a) as being unpatentable over Stolmeier et al. (US 6257763 B1) in view of Kraus (US 3380481), further in view of May (US 5725312), and claims 135 and 136 under 35 U.S.C. 103(a) as being unpatentable over Stolmeier et al. (US 6257763 B1) in view of Kraus (US 3380481) further in view of May (US 5725312) have been fully considered and are persuasive. Therefore, the rejection has been withdrawn.

However, upon further consideration, new grounds of rejection are made for the reasons set forth above.

Conclusion

23. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Custer (US 62264366 B1) and Tilman et al. (US 6467956 B1) claim bags with hoods, fasteners, first and second panels with weekend areas.

24. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

25. A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.


26. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Robert Madsen whose telephone number is (571) 272-1402. The examiner can normally be reached on 7:00AM-3:30PM M-F.

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27. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Milton Cano can be reached on (571) 272-1398. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

28. Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Robert Madsen
Examiner
Art Unit 1761


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